

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
1:10cv95**

<b>WILLIAM NORKUNAS,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>Vs.</b>	)	<b>ORDER</b>
	)	
<b>HP HOSPITALITY, LLC, a Limited</b>	)	
<b>Liability Company,</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**THIS MATTER** is before the court on defendant's Motion to File Certain Materials Under Seal.

A party who seeks to seal any pleading must comply with Local Civil Rule 6.1 (W.D.N.C. 2009). The Local Civil Rule provides in relevant part as follows:

**LCvR 6.1            SEALED FILINGS AND PUBLIC ACCESS.**

**(A) *Scope of Rule.*** This rule shall govern any request by a party to seal, or otherwise restrict public access to, any materials filed with the Court or utilized in connection with judicial decision-making. As used in this rule, "materials" shall include pleadings as well as documents of any nature and in any medium.

**(B) *Filing Under Seal.*** No materials may be filed under seal except by Order of the Court, pursuant to a statute, or in accordance with a previously entered Rule 26(e) Protective Order.

**(C) *Motion to Seal or Otherwise Restrict Public Access.*** A request by a party to file materials under seal shall be made by formal motion pursuant to [LCvR 7.1](#). Such motion shall be filed electronically under the designation "Motion to Seal." The motion or supporting brief shall

set forth:

- (1) a non-confidential description of the material sought to be sealed;
- (2) a statement as to why sealing is necessary and why there are no alternatives to filing under seal;
- (3) unless permanent sealing is sought, a statement as to the period of time the party seeks to have the material maintained under seal and as to how the matter is to be handled upon unsealing; and
- (4) supporting statutes, case law or other authority.

\* \* \*

**(E) *Public Notice.*** No motion to seal or otherwise restrict public access shall be determined without reasonable public notice. Notice shall be deemed reasonable where a motion is filed in accordance with the provisions of [LCvR 6.1\(C\)](#). Other parties, interveners, and non-parties may file objections and briefs in opposition or support of the motion within the time provided by [LCvR 7.1](#) and may move to intervene under Fed. R. Civ. P. 24.

**(F) *Orders Sealing Documents.*** Orders sealing or otherwise restricting access shall reflect consideration of the factors set forth in [LCvR 6.1\(C\)](#). In the discretion of the Court, such orders may be filed electronically or conventionally and may be redacted.

\* \* \*

L.Cv.R. 6.1(W.D.N.C. 2008). Here, Rule 6.1(C)(1) through (4) has been complied with.

As reflected in the rule, the court is required to consider the factors contained in Local Civil Rule 6.1(C). The first factor is found in Local Civil Rule 6.1(C)(1), which requires that the parties adequately describe the materials sought to be sealed. The rule requires “a non-confidential description of the material sought to be sealed.” L.Civ.R. 6.1(C)(1). The rule is intended to give third-parties, including the press, fair notice of the nature of the materials sought to be sealed. The description

contained in the motion is adequate.

The court next considers Local Civil Rule 6.1(C)(2), which requires “a statement as to why sealing is necessary and why there are no alternatives to filing under seal.” L.Cv.R. 6.1(C)(2). Such statement has been provided and is adequate.

As to Local Civil Rule 6.1(C)(3), the parties have indicated that sealing should be permanent. There are no provisions for sealing matters beyond the life of the case, inasmuch as case materials must be placed in the National Archives. If the parties believe at the conclusion of the case that such materials remain sensitive, they should move the Clerk of court to strike any such sensitive pleadings from the official court record.

Finally, the court has considered Local Civil Rule 6.1(C)(4), which requires the parties to provide citations of law supporting the relief they seek. The motion contains appropriate citations of current case law, Media General Operations, Inc. v. Buchanan, 417 F.3d 424 (4<sup>th</sup> Cir. 2005), which held as follows:

We have held that in determining whether to seal judicial documents, a judicial officer must comply with certain procedural requirements. *Washington Post*, 807 F.2d at 390. The decision to seal documents must be made after independent review by a judicial

officer, and supported by “findings and conclusions specific enough for appellate review.” *Goetz*, 886 F.2d at 65-66. If a judicial officer determines that full public access is not appropriate, she “must consider alternatives to sealing the documents” which may include giving the public access to some of the documents or releasing a redacted version of the documents that are the subject of the government's motion to seal. *Goetz*, 886 F.2d at 66.

Id., at 429. The proposed sealing of the exhibit in this matter as well as the briefs would be consistent with current case law inasmuch as the settlement agreement at issue was clearly intended to be confidential.

Having considered all of the factors provided in Local Civil Rule 6.1(C), the court will grant the Motion to Seal. Inasmuch as the time for public response has not run to this consent motion, the court will consider any objection to this Order from non-parties as an objection to the motion, requiring no additional burden under the Federal Rules of Civil Procedure.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that defendant’s Motion to File Certain Materials Under Seal (#18) is **GRANTED**, and the settlement agreement and mutual release may be filed under seal, as well as any brief quoting any sensitive portion of such exhibit. Any Order issued by this court will not necessarily be sealed, but references to any sensitive portion of sealed materials will be minimized.

Signed: October 6, 2010

Dennis L. Howell

Dennis L. Howell  
United States Magistrate Judge

